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SENSITIVE
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STATE - PLEASE PASS U.S. SUPREME COURT
FOR JUSTICE SCALIA FROM AMBASSADOR ASHE

E.O. 12958: N/A

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SUBJECT: SCENESETTER FOR JUSTICE SCALIA'S SEPTEMBER 23-25
VISIT TO WARSAW

¶1. (SBU) Mr. Justice, Mission Poland warmly welcomes your September 23-25 visit to Warsaw. Your trip comes on the heels of ceremonies in Gdansk marking the 70th anniversary of the outbreak of World War II -- one of many important commemorations this year, including the 20th anniversary of 1989 elections that helped bring about the collapse of communism in Europe and the 90th anniversary of U.S.-Polish diplomatic relations. Despite uncertainty about the future of European Missile Defense -- a U.S. decision is expected soon -- and worries here that U.S. efforts to improve relations with Russia will imperil bilateral strategic cooperation, the U.S.-Polish friendship is strong and productive. While Poles still count on the U.S. as the key guarantor of security in the region, there is growing public concern that the U.S. assigns the bilateral relationship less weight than Poland does and that the U.S. does not fully appreciate Poland's many contributions to the cause of freedom and democracy. According to the German Marshall Fund's recent Transatlantic Trends survey, Poles, who were once considerably more pro-American than Western Europeans, are now much more skeptical of the U.S.

¶2. (SBU) As in the American Revolution, World War I, and World War II, Polish soldiers fought side by side with U.S. troops in Iraq for five years and still maintain the seventh largest troop contingent in Afghanistan. Moreover, Poland has long supported efforts to extend the zone of security, prosperity, and stability to the former Soviet space. Despite our shared ideals and close historical ties, as Poland's ties to the EU continue to deepen -- and as Poland becomes more influential in Brussels -- we will find it increasingly difficult to make the U.S.-Polish relationship relevant to average Poles, most of whom take great offense at Poland's continued exclusion from the U.S. Visa Waiver Program (VWP). Poles feel they should be included in the VWP as a sign of American appreciation for Polish contributions on numerous issues.

MISSILE DEFENSE AND PATRIOTS

¶3. (SBU) The fate of Missile Defense remains first and foremost on the minds of Poland's government and public. In August 2008, Prime Minister Donald Tusk agreed to locate U.S. missile interceptors in Poland under the auspices of a Ballistic Missile Defense Agreement (BMDA). He did so largely to accommodate a direct request from the United States, Poland's longtime ally. Poles are now waiting patiently for our decision on the future of European Missile Defense. Polish media report almost daily that the U.S. will likely withdraw from its prior decisions. Most Poles are not wedded to Missile Defense, but they strongly wish to avoid any perception that the U.S. is giving up on the program in order to reset relations with Russia.

14. (SBU) Regardless of the fate of Missile Defense, there is an expectation that the U.S. will move forward with a rotation of U.S. Patriot missiles. We have been reassuring on this point. The President has confirmed that the U.S. will implement the August 2008 bilateral Declaration on Strategic Cooperation that calls for the Patriot rotation. The form that rotation will take continues to receive much attention. Earlier this year, headlines heralding the arrival of unarmed "Naked Patriots" reflected fears that the rotation of a Patriot battery from Germany may not meet Polish expectations, at least in the initial rotation; the Poles seek a combat-ready, fully operational system capable of integration with the Polish air defense system. The USG interagency continues to work these issues, and is expected to inform the Poles of our decisions shortly after your visit. The Missile Defense decision in particular is extremely sensitive, and current U.S. thinking is closely held.

THE RUSSIA FACTOR

15. (SBU) For historical reasons, Poles do not want to see key decisions made over Poland's head, but they do not object to improved U.S.-Russian relations. Prime Minister Tusk and Foreign Minister Radoslaw Sikorski (with whom you will meet) have tamped down the rhetoric directed against Russia, instead choosing to engage in a pragmatic bilateral dialogue. The Government has also endeavored to keep thorny historical issues such as the massacre of Polish soldiers at Katyn from impeding progress in areas like bilateral trade. While Polish officials do not expect major breakthroughs in relations with Russia in the near future, their pragmatic policy has already paid dividends, including a recent agreement on navigation in the Vistula Bay, reopening

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commercial shipping between the Polish port of Elblag and the Russian enclave of Kaliningrad for the first time since the break-up of the Soviet Union. This pragmatic approach is balanced by anxiety about Russia's role as a regional power, particularly after the August 2008 conflict in Georgia.

DOMESTIC POLITICAL ENVIRONMENT

16. (SBU) The Polish economy has thus far managed to weather the global crisis and is generally performing better than other European economies. While Prime Minister Tusk and his center-right Civic Platform party continue to enjoy relatively high public support (between 45 and 50 percent favorability), his Government and cabinet ministers, for a variety of reasons, are less popular. Tusk is widely expected to run against President Lech Kaczynski (who founded the more conservative Law and Justice party) in next year's presidential elections. Tusk's policies have focused primarily on accelerating Poland's political and economic integration into the EU and on increasing Poland's influence in Brussels. Despite Tusk's popularity, media and the opposition routinely assert that he formulates policy primarily on the basis of polls and that his only policy objective is to win election to the presidency. Although President Kaczynski continues to poll as one of Poland's least popular politicians, recent opinion polls predict he would finish second in the first round of presidential elections -- setting up a Tusk-Kaczynski run-off. Given the high stakes, media analysts predict the next 12 months promise little more than a parliamentary stalemate between Poland's two dominant political parties.

POLAND'S JUDICIAL SYSTEM UNDER FIRE

17. (SBU) Poland's judiciary -- the EU's most expensive on a per capita basis --- has long been the subject of public and media criticism. Since taking office in January, Justice Minister Andrzej Czumak (with whom you will meet) has sought to take on the perceived lack of integrity among Polish prosecutors and judges. Though difficult to prove,

corruption is believed to be commonplace. Holdover communist-era practices slow court proceedings and lengthen pre-trial detentions. Inexperienced entry-level judges join a close-knit group that enjoys almost complete immunity, with limited oversight. While no court system has ever been criticized for being too timely or too inexpensive, it is increasingly clear to most Poles that another round of judicial reforms is needed as Poland leaves its communist legal legacy behind. Although some judges claim that Minister Czumy's pledged reforms would encourage executive branch interference, few Poles inside or outside of government would accept measures that undermine the independence of the judiciary.

A BIT ABOUT YOUR HOST

18. (SBU) Poland's independent Civil Rights Ombudsman, Dr. Janusz Kochanowski, at whose invitation you will deliver a lecture at the Warsaw Royal Castle, was appointed in January 2006 by the previous Law and Justice Government. He was born in 1940 and graduated from Warsaw University with a degree in law in 1966. He worked as a lecturer at Warsaw University until 1991, when he was appointed to serve as Poland's Consul General in London. In 1997, he returned to his position as a lecturer at Warsaw University. He was a member of the Solidarity movement from 1980 until 1991. Kochanowski's appointment was opposed by both the Civic Platform and the post-communist Democratic Left Alliance, largely because his conservative views mirror those of the Law and Justice party. He was confirmed by a 239-194 vote.

19. (SBU) Kochanowski appears regularly in press interviews and comments frequently in the media on court decisions, as well as domestic and international social issues and current events. Over the past year, he has proposed amendments to Poland's constitution, along with revisions to legislation on public media, the press, the criminal code, and election laws. He has also spoken out on issues concerning the rights of children, women, disabled persons, homosexuals, immigrants, and detainees. Kochanowski was strongly criticized by counterparts in other EU member states for advocating chemical castration for convicted pedophiles. He has approached the Embassy to express concern about allegations of poor treatment of Poles at U.S. ports of entry and to advocate on behalf of the mother of a U.S. Marine who sought a meeting with President Obama to discuss her son's murder.

PRIVATE PROPERTY RESTITUTION LEGISLATION STALLED

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110. (SBU) Poland is one of the last countries in Central Europe that have not made legislative provisions for an expedited, administrative (rather than judicial) mechanism for resolving private property restitution claims, an issue closely tracked by the American Jewish community. Private property compensation to owners and heirs -- including Holocaust survivors -- remains politically unpopular in Poland, even though the great majority of those compensated would be Poles living in Poland. The Polish Government recently claimed that Polish compensation legislation would risk bolstering pending legal claims by German nationals, even though the German government has called the claims invalid. Polish officials also argue that the economic crisis is complicating a multi-billion dollar payment program.

ASHE